

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8884 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KHERUNBEN KASAMBHAI SANDHI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8884 of 2001
MR PRAVIN GONDALIYA for Petitioner No. 1
MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 30.7.2001 passed by the Commissioner of Police, Rajkot in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered three registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order. The authority also came to a conclusion that powers under Section 9(2) of the PASA Act are required to be exercised in public interest and that lesser drastic remedy is not possible to be exercised as the petitioner is required to be prevented immediately from pursuing her book-legging activities. The authority observed that the activities of the petitioner detenu are detrimental to public health and public order.

3. The main grounds pressed into service by learned Advocate Mr. Gondaliya for the petitioner is that many of the documents supplied to the detenu are not legible and are in a language which is not understood by the detenu and translated version is not supplied. This has affected the right of the detenu of making an effective representation under Art. 22(5) of the Constitution of India. The second fold of argument of Mr. Gondaliya is that proper exercise is not undertaken by the detaining authority while exercising powers under Section 9(2) of the PASA, the verification is not proper and subjective satisfaction therefore would be vitiated. He submitted that the petition may therefore be allowed.

4. On the other hand, learned AGP Mr. Patel has opposed this petition. He has drawn attention of this Court to the affidavit-in-reply to indicate that the detaining authority had personally summonsed the anonymous witnesses and has thereafter only recorded a subjective satisfaction about the genuineness of the fear expressed by the anonymous witnesses.

4.1 As regards the illegible copies of the documents, Mr. Patel has personally verified and has in all fairness conceded that aspect. There is no dispute about the fact that some of the documents which contained endorsement in English are supplied, but translated version thereof was not supplied to the detenu.

5. Considering the contentions raised before this Court, it has to be recorded that the petition will have to be allowed on the ground of infringement of right of the petitioner of making an effective representation, firstly on the ground that several documents supplied to

the detenu are not legible. This Court has also verified those documents and it is found that they are not legible as in fairness conceded to by the learned AGP. Supply of illegible document would be of no virtue to the detenu as it would virtually be impossible for the detenu to make an effective representation and therefore her right of making an effective representation would be infringed, which would vitiate her continued detention. The documents relates to the registered offences.

6. So far as the statements are concerned, this Court has gone through the affidavit-in-reply. The detaining authority has stated that he had personally verified the genuineness of fear expressed by the anonymous witnesses by calling them and need for the exercise of powers under Section 9(2) of the PASA Act, maintaining anonymity of the witnesses. There is nothing to indicate that any exercise except calling the witnesses was undertaken by the authority. As observed by the apex Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1989 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu.

6.1 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the functioning authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of the PASA Act.

6.2 It would also be proper to record that while

exercising powers under Section 9(2) of the PASA Act, the authority is expected to weigh the constitutional right of the detenu on one hand and the public interest on the other and only if the public interest out-ways the constitutional right of the detenu, the power under Section 9(2) can be exercised. This would also call for some exercise, which is required to be indicated and that not having been done, the order of detention cannot be permitted to stand. The continued detention of the detenu therefore, is vitiated. The petition deserves to be allowed and the same is allowed.

7. The petition is therefore, allowed. Order of detention dated 30th July, 2001 passed by the Commissioner of Police, Rajkot is quashed and set aside. Detenu Kherunben Kasambhai Sandhi be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave, J.)

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